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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/849,286	05/19/2004	Tommy F. Brookey	2223-02402	5603

23505 7590 06/10/2005

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EXAMINER
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TUCKER, PHILIP C

ART UNIT	PAPER NUMBER
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1712

DATE MAILED: 06/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/849,286

Applicant(s)

BROOKEY ET AL.

Examiner

Philip C. Tucker

Art Unit

1712

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,3,6,8,9,11-15,17,20,36-38,206 and 256-267 is/are pending in the application.  
4a) Of the above claim(s) 206 and 256-267 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 263-267 is/are allowed.
- 6) ☒ Claim(s) 1,3,6,8,9,11-15,17 and 36-38 is/are rejected.
- 7) ☐ Claim(s) 20 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

### DETAILED ACTION

**1. Applicants election of group I, without traverse is noted.**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1, 2, 14, 15, 17, 36 and 37 are rejected under 35 U.S.C. 102(b) as being anticipated by Sugama (4936384).

Sugama teaches a fluid which comprises hollow microspheres as a lost circulation additive (see abstract). The spheres have a density and size within the scope of the present invention (see column 1, lines 62-65).

3. Claims 1, 3, 8, 11, 14, 15, 17, 36 and 37 are rejected under 35 U.S.C. 102(b) as being anticipated by Miles (3700050).

Miles teaches drilling and packer fluids which comprise hollow microspheres having a size and density within the scope of the present invention (see column 1, lines 38-47 and column 2, lines 18-30). The fluid can contain viscosifiers and dilatants such

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as clay (column 3, lines 60-65). The spheres would inherently have lost circulation properties.

4. Claims 1, 3, 6, 11, 15, 17, 36, 37 are rejected under 35 U.S.C. 102(e) as being anticipated by Luther (6235271).

Luther teaches a composition which comprises hollow microspheres which may be in either a water-based or oil-based fluid (column 14, line 56- column 15, line 3). The composition may comprise a viscosifier such as xanthan (column 15, lines 57-60). The density of the type of hollow microsphere taught would be within the scope of claim 17 (see column 14, lines 31-41). Applicants intended use as a lost circulation material does not distinguish over the prior art (In re Pearson 181 USPQ 641).

5. Claims 1, 3, 36 and 37 are rejected under 35 U.S.C. 102(e) as being anticipated by Leuchtenberg (2003/0079912).

Leuchtenberg teaches a drilling fluid which comprises hollow spheres (see paragraph [0098]). Applicants intended use of the spheres as a lost circulation material does not distinguish over the prior art (In re Pearson 181 USPQ 641).

6. Claims 1, 3, 6, 8, 9, 11, 17 and 36-38 are rejected under 35 U.S.C. 102(b) as being anticipated by Blomberg (4933031).

Blomberg teaches a composition which comprises a hollow sphere within the scope of the present invention, having a density within the scope of the present

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invention (see column 3, lines 30-32 and column 4, line 67 – column 5, line 2). Fluid loss additives, a dilatant such as starch, and other viscosifiers may be added (column 4, lines 33-42). Applicants intended use of the spheres as a lost circulation material and the fluid in wells does not distinguish over the prior art (In re Pearson 181 USPQ 641).

7. Claims 1, 3, 6, 8, 9, 11, 13-15, 17, 36 and 37 are rejected under 35 U.S.C. 102(b) as being anticipated by Smith (4530402).

Smith teaches a fluid for use in a wellbore which comprises hollow microspheres having a density and size within the present invention (column 4, line 60 – column 5, line 6). The fluid may comprise various viscosifiers, and dilatants, such as starch and clays. The clays are also aggregating particles as in claim 6. Applicants intended use of the spheres as a lost circulation material does not distinguish over the prior art (In re Pearson 181 USPQ 641).

8. Claims 1, 3, 6, 8, 11, 13, 15, 17, 36 and 37 are rejected under 35 U.S.C. 102(b) as being anticipated by Lawson (6152227).

Lawson teaches a drilling fluid which comprises microspheres having a density within the scope of the present invention (see column 4, lines 27-39). Cellulose fibers may be used to prevent lost circulation and to viscosify the fluid (column 3, line 66 – column 4, lines 7). Dilatants and aggregating particles such as clays may be used (see Tables). Applicants intended use as a lost circulation material does not distinguish over the prior art (In re Pearson 181 USPQ 641).

9. Claim 20 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

10. Claims 263-267 are allowable over the art of record.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Philip C. Tucker whose telephone number is 571-272-1095. The examiner can normally be reached on Monday - Friday, Flexible schedule.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Randy Gulakowski can be reached on 571-272-1302. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Philip C Tucker

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Primary Examiner  
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PCT-3363